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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 ABONILICO LAMAR CARROLL,  
12 Inmate Booking No. 12584822,

13 Plaintiff,

14 vs.

15 GEORGE BAILEY DETENTION  
16 FACILITY; DEPUTY WHITE; DEPUTY  
17 GARCIA; DEPUTY PRICE,

18 Defendants.  
19

Case No. 13-CV-1256 JLS (MDD)

**ORDER: (1) GRANTING MOTION  
TO PROCEED *IN FORMA*  
*PAUPERIS*; AND (2) DISMISSING  
COMPLAINT FOR FAILURE TO  
STATE A CLAIM PURSUANT TO  
28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b)**

**(ECF No. 4)**

20 Plaintiff, currently housed at George Bailey Detention Facility located in San Diego,  
21 California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983.  
22 In addition, Plaintiff has filed a Motion to Proceed *In Forma Pauperis* (IFP) pursuant to 28  
23 U.S.C. § 1915(a). (ECF No. 4.)

24 **I. MOTION TO PROCEED IFP**

25 ***A. Legal Standard***

26 All parties instituting any civil action, suit, or proceeding in a district court of the United  
27 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28  
28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is

1 granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493  
 2 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).  
 3 Prisoners granted leave to proceed IFP, however, remain obligated to pay the entire fee in  
 4 installments, regardless of whether the action is ultimately dismissed for any reason. *See* 28  
 5 U.S.C. § 1915(b)(1) & (2).

## 6 ***B. Analysis***

7 The Court finds that Plaintiff has submitted an affidavit that complies with 28 U.S.C.  
 8 § 1915(a)(1), and that he has attached a certified copy of his trust account statement pursuant to  
 9 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff's trust account statement shows that  
 10 he has insufficient funds from which to pay an initial partial filing fee. Accordingly, the Court  
 11 **GRANTS** Plaintiff's Motion to Proceed IFP (ECF No. 4) and assesses no initial partial filing  
 12 fee per 28 U.S.C. § 1915(b)(1).

## 13 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

### 14 ***A. Legal Standard***

15 The Prison Litigation Reform Act's ("PLRA") amendments to 28 U.S.C. § 1915 also  
 16 obligate the Court to review complaints filed by all persons proceeding IFP and by those, like  
 17 Plaintiff, who are "incarcerated or detained in any facility [and] accused of, sentenced for, or  
 18 adjudicated delinquent for, violations of criminal law or the terms or conditions of parole,  
 19 probation, pretrial release, or diversionary program," "as soon as practicable after docketing."  
 20 *See* 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b). Under these provisions, the Court must *sua sponte*  
 21 dismiss any prisoner civil action and all other IFP complaints, or any portions thereof, that are  
 22 frivolous, malicious, fail to state a claim, or seek damages from defendants who are immune.  
 23 *See* 28 U.S.C. §§ 1915(e)(2)(B), 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)  
 24 (en banc); *Resnick v. Hayes*, 213 F.3d 443, 446 n.1 (9th Cir. 2000).

## 25 ***B. Analysis***

### 26 ***(i) Fourth Amendment Claim***

27 While not entirely clear, it appears that Plaintiff is alleging that his Fourth Amendment  
 28 rights were violated when he was subjected to a strip search. The Fourth Amendment applies

1 to a jail or prison's policy of strip searches of inmates. *See Bull v. City of San Francisco*, 595  
 2 F.3d 964, 974-75 (9th Cir. 2010) (en banc). When determining whether Plaintiff has stated a  
 3 Fourth Amendment claim for an unreasonable search, the Court looks to whether the strip search  
 4 was "reasonably related to legitimate penological interests." *Id.* (citing *Turner v. Safley*, 482  
 5 U.S. 78, 89 (1987)). "The reasonableness of a search is determined by reference to its context."  
 6 *Id.* at 971 (citing *Michenfelder v. Sumner*, 860 F.2d 328, 332 (9th Cir. 1988)). Prison officials  
 7 must be accorded "wide-ranging deference in the adoption and execution of policies and  
 8 practices that in their judgment are needed to preserve internal order and discipline and to  
 9 maintain institutional security." *Id.* at 974; *see also Florence v. Bd. of Chose Freeholders of*  
 10 *Cnty. of Burlington*, \_\_ U.S. \_\_, 132 S.Ct. 1510 (2012).

11 Plaintiff does not allege with any specificity that there were no "legitimate penological  
 12 interests" at play here. *Id.* Furthermore, there are insufficient factual allegations with regard to  
 13 the strip search itself. It appears that Plaintiff is arguing that there was no basis for the strip  
 14 search and, while he states he was naked for an unknown period of time, there are no facts from  
 15 which the Court could find that the strip search itself was unreasonable. The Court finds that  
 16 Plaintiff's claims do not rise to the level of a strip search that was "excessive, vindictive,  
 17 harassing or unrelated to any legitimate penological interest." *Michenfelder*, 860 F.3d at 332.  
 18 Thus, the Court finds that Plaintiff fails to allege a Fourth Amendment constitutional violation.

19 *(ii) Allegations Against George Bailey Detention Facility*

20 A local jail is not a proper defendant under § 1983. *See Vance v. Cnty. of Santa Clara*,  
 21 928 F. Supp. 993, 996 (N.D. Cal. 1996) ("Naming a municipal department as a defendant is not  
 22 an appropriate means of pleading a § 1983 action against a municipality.") (citation omitted);  
 23 *Powell v. Cook Cnty. Jail*, 814 F. Supp. 757, 758 (N.D. Ill. 1993) ("Section 1983 imposes  
 24 liability on any 'person' who violates someone's constitutional rights 'under color of law.' Cook  
 25 County Jail is not a 'person.'"). Thus, to the extent Plaintiff alleges that "George Bailey  
 26 Detention Facility" has violated his constitutional rights, his Complaint fails to state a claim  
 27 because this entity is not a "person" subject to suit under § 1983.

28 Furthermore, while the County of San Diego *itself* may be considered a "person" and,

1 therefore, a proper defendant under § 1983, *see Monell v. Dept. of Social Servs.*, 436 U.S. 658,  
 2 691 (1978); *Hammond v. Cnty. of Madera*, 859 F.2d 797, 801 (9th Cir. 1988), Plaintiff has not  
 3 named the County as a Defendant. Moreover, as a municipality, the County *may* be held liable  
 4 under § 1983—but only where the Plaintiff alleges facts showing that a constitutional deprivation  
 5 was caused by the implementation or execution of “a policy statement, ordinance, regulation,  
 6 or decision officially adopted and promulgated” by the County, or a “final decision maker” for  
 7 the County. *Monell*, 436 U.S. at 690; *Bd. of the Cnty. Comm’rs v. Brown*, 520 U.S. 397, 402-04  
 8 (1997); *Navarro v. Block*, 72 F.3d 712, 714 (9th Cir. 1995). In other words, “respondeat  
 9 superior and vicarious liability are not cognizable theories of recovery against a municipality.”  
 10 *Miranda v. Clark Cnty., Nevada*, 279 F.3d 1102, 1109-10 (9th Cir. 2002). “Instead, a *Monell*  
 11 claim exists only where the alleged constitutional deprivation was inflicted in ‘execution of a  
 12 government’s policy or custom.’” *Id.* (quoting *Monell*, 436 U.S. at 694).

13 As currently pleaded, Plaintiff’s complaint fails to state a claim under 28 U.S.C.  
 14 § 1915A(b) because he has failed to allege any facts which “might plausibly suggest” that the  
 15 County itself violated his constitutional rights. *See Hernandez v. Cnty. of Tulare*, 666 F.3d 631,  
 16 637 (9th Cir. 2012) (applying the pleading standards of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009),  
 17 to *Monell* claims); *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (finding that 42 U.S.C.  
 18 § 1983 provides for relief only against those who, through personal involvement evidenced by  
 19 affirmative acts, participation in another’s affirmative acts, or failure to perform legally required  
 20 duties, cause the deprivation of plaintiff’s constitutionally protected rights). Therefore, Plaintiff  
 21 fails to state a claim against George Bailey Detention Facility or the County of San Diego.

22 Accordingly, the Court finds that Plaintiff’s complaint fails to state a viable § 1983 claim  
 23 against any of the currently named Defendants. The Court, therefore, *sua sponte* **DISMISSES**  
 24 the complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b).

### 25 **III. CONCLUSION AND ORDER**

26 Good cause appearing, **IT IS HEREBY ORDERED** that:

27 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (ECF No. 4)  
 28 is **GRANTED**.

